



JAN 11 2008

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In Re: Patent Term Extension
Application for
U.S. Patent No. 6,309,402

NOTICE OF FINAL DETERMINATION
AND
REQUIREMENT FOR ELECTION

A determination has been made that U.S. Patent No. 6,309,402, which claims the medical device, S8 Over-the-Wire System, is eligible for patent term extension under 35 U.S.C. § 156. The period of extension has been determined to be 413 days.

A single request for reconsideration of this final determination as to the length of extension of the term of the patent may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period.

Applicant also has applied for patent term extension of U.S. Patent Nos. 5,292,331; 5,800,509; 5,836,965; 5,879,382; 5,891,190; 6,159,229 and 6,344,053 based on the regulatory review period of PMA P030009 for the medical device, S8 Over-the-Wire System.

When patent term extension applications are filed for extension of the terms of different patents based upon the same regulatory review period for a product, the certificate of extension is issued to the patent having the earliest date of issuance, unless applicant expressly elects a different patent. In the absence of an election by applicant within one month of the date of this notice, and in accordance with 37 CFR 1.785(b), the applications for patent term extension in the above identified patent number and U.S. Patent Nos. 5,800,509; 5,836,965; 5,879,382; 5,891,190; 6,159,229 and 6,344,053 will be denied. Accordingly, the application for patent term extension of the patent having the earlier date of issuance will be granted. (Absent an express election, a certificate of extension will be issued in U.S. Patent No. 5,292,331). In the absence of a request for reconsideration, and if U.S. Patent No. 6,309,402 is elected, the Commissioner will issue to the patentee a certificate of extension, under seal, for a period of 413 days in U.S. Patent No. 6,309,402.

The period of extension has been calculated using the Food and Drug Administration determination of the length of the regulatory review period published in the Federal Register of February 23, 2007 (72 Fed. Reg. 8182). Under 35 U.S.C. § 156(c):

$$\begin{aligned}\text{Period of Extension} &= \frac{1}{2} \text{ (Testing Phase) + Approval Phase} \\ &= \frac{1}{2} \text{ (477 days) + 175 days} \\ &= 413 \text{ days (1.1 years)}\end{aligned}$$

Since the regulatory review period began December 20, 2001, after the patent issued (October 30, 2001), the entire regulatory review period has been considered in the above determination of the length of the extension period 35 U.S.C. § 156(c). No determination of a lack of due diligence under 35 U.S.C. § 156(c)(1) was made.

Neither the limitations of 35 U.S.C. § 156(g)(6) nor 35 U.S.C. § 156(c)(3) operate to reduce the period of extension determined above.

Upon issuance of the certificate of extension, the following information will be published in the Official Gazette:

U.S. Patent No.:	6,309,402
Granted:	October 30, 2001
Original Expiration Date ¹ :	December 18, 2014 ²
Applicant:	Bradly A. Jendersee, et al.
Owner of Record:	Medtronic Vascular, Inc.
Title:	Stent Delivery and Deployment Method
Product Trade Name:	S8 Over-the-Wire System
Term Extended:	413 days
Expiration Date of Extension:	February 4, 2016 ³

¹Subject to the provisions of 35 U.S.C. § 41(b).

²In the application for Patent Term Extension for U.S. Patent No. 6,309,402, filed November 26, 2003, applicant indicated an expiration date of U.S. Patent No. 6,309,402 as December 19, 2014, on page 4, and, on page 14, an expiration date of December 17, 2014. The actual filing date of the application, which matured into U.S. Patent No. 6,309,402, is November 10, 1998, and the application sought the benefit of an earlier filing on October 19, 1994. Therefore, with 60 days of patent term adjustment added to the twenty year term of U.S. Patent No. 6,309,402, the original expiration date of U.S. Patent No. 6,309,402 is December 18, 2014.


³In the application for Patent Term Extension, Applicant indicated that the number of days for extension was 333 days by virtue of the terminal disclaimer over U.S. Patent No. 5,836,965. However, as MPEP 2751 indicates, terminally disclaimed patents are eligible for

Any correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this determination should be directed to the undersigned at (571) 272-7755.



Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
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RE: S8 Over-the-Wire System
FDA Docket No.: 2004E-0302

Attention: Beverly Friedman

extension. Recently, the Federal Circuit upheld the PTO's interpretation of 35 U.S.C § 156 which permits a patent to receive a patent term extension beyond an expiration date set by a terminal disclaimer. See Merck & Co. v. Hi-Tech Pharmacal Co., 482 F.3d 1317 (Fed. Cir. 2007).